

## Wage and Hour Division, Labor

## § 500.140

### § 500.133 Substantive Federal and State safety and health standards defined.

Substantive safety and health standards include, but are not limited to, those that provide fire prevention, an adequate and sanitary supply of water, plumbing maintenance, structurally sound construction of buildings, effective maintenance of those buildings, provision of adequate heat as weather conditions require, and reasonable protections for inhabitants from insects and rodents. Substantive housing standards do not include technical or procedural violations of safety and health standards.

### § 500.134 Compliance with State standards.

Compliance with the substantive Federal housing safety and health standards shall not excuse noncompliance with applicable substantive State housing safety and health standards.

### § 500.135 Certificate of housing inspection.

(a) Except as provided in paragraph (c) of this section, a facility or real property to be used for housing a migrant agricultural worker shall not be occupied by any migrant agricultural worker unless either a State or local health authority or other appropriate agency, including a Federal agency, has certified that the facility or real property meets applicable safety and health standards.

(b) Except as provided in paragraph (c) of this section, the person who owns or controls a facility or real property shall not permit it to be occupied by any migrant agricultural worker unless a copy of a certificate of occupancy from the State, local or Federal agency which conducted the housing safety and health inspection is posted at the site of the facility or real property. The original of such certificate of occupancy shall be retained by such person for three years and made available for inspection in accordance with section 512 of the Act.

(c) If a request for an inspection of a facility or real property is made to the appropriate State, local or Federal agency at least forty-five (45) days prior to the date on which it is to be

occupied by a migrant agricultural worker but the agency has not conducted an inspection by such date, the facility or property may be occupied by migrant agricultural workers unless prohibited by State law.

(d) Receipt and posting of a certificate of occupancy as provided under paragraph (b) of this section, or the failure of an agency to inspect a facility or property within the forty-five (45) day time period, shall not relieve the person who owns or controls a facility or property from the responsibility of ensuring that such facility or property meets the applicable State and Federal safety and health standards. Once such facility or property is occupied, such person shall supervise and continually maintain such facility or property so as to ensure that it remains in compliance with the applicable safety and health standards.

## Subpart E—Enforcement

### § 500.140 General.

Whenever the Secretary believes that the Act or these regulations have been violated he shall take such action and institute such proceedings as he deems appropriate, including (but not limited to) the following:

(a) Recommend to the Attorney General the institution of criminal proceedings against any person who willfully and knowingly violates the Act or these regulations;

(b) Recommend to the Attorney General the institution of criminal proceedings against any farm labor contractor who recruits, hires, employs, or uses, with knowledge, the services of any illegal alien, as defined in § 500.20(n) of these regulations, if such farm labor contractor has:

(1) Been refused issuance or renewal of, or has failed to obtain, a Certificate of Registration, or

(2) Is a farm labor contractor whose certificate has been suspended or revoked;

(c) Petition any appropriate District Court of the United States for temporary or permanent injunctive relief to prohibit violation of the Act or these regulations by any person;

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(d) Assess a civil money penalty against any person for any violation of the Act or these regulations;

(e) Refer any unpaid civil money penalty which has become a final and unappealable order of the Secretary or a final judgment of a court in favor of the Secretary to the Attorney General for recovery;

(f) Revoke or suspend or refuse to issue or renew any Certificate of Registration authorized by the Act or these regulations;

(g) Deny the facilities and services afforded by the Wagner-Peyser Act to any farm labor contractor who refuses or fails to produce, when asked, a valid Certificate of Registration;

(h) Institute action in any appropriate United States District Court against any person who, contrary to the provisions of section 505(a) of the Act, discriminates against any migrant or seasonal agricultural worker.

### § 500.141 Concurrent actions.

The taking of any one of the actions referred to in § 500.140 shall not be a bar to the concurrent taking of any other action authorized by the Act and these regulations.

### § 500.142 Representation of the Secretary.

(a) Except as provided in section 518(a) of title 28, U.S. Code, relating to litigation before the Supreme Court, the Solicitor of Labor may appear for and represent the Secretary in any civil litigation brought under the Act; but all such litigation shall be subject to the direction and control of the Attorney General.

(b) The Solicitor of Labor, through the authorized representatives identified in § 500.231, shall represent the Secretary in all administrative hearings under the Act and these regulations.

### § 500.143 Civil money penalty assessment.

(a) A civil money penalty may be assessed for each violation of the Act or these regulations.

(b) In determining the amount of penalty to be assessed for any violation of the Act or these regulations the Secretary shall consider the type of violation committed and other relevant fac-

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tors, including but not limited to the following:

(1) Previous history of violation or violations of this Act and the Farm Labor Contractor Registration Act;

(2) The number of workers affected by the violation or violations;

(3) The gravity of the violation or violations;

(4) Efforts made in good faith to comply with the Act (such as when a joint employer agricultural employer/association provides employment-related benefits which comply with applicable law to agricultural workers, or takes reasonable measures to ensure farm labor contractor compliance with legal obligations);

(5) Explanation of person charged with the violation or violations;

(6) Commitment to future compliance, taking into account the public health, interest or safety, and whether the person has previously violated the Act;

(7) The extent to which the violator achieved a financial gain due to the violation, or the potential financial loss or potential injury to the workers.

[48 FR 36741, Aug. 12, 1983, as amended at 62 FR 11748, Mar. 12, 1997]

### § 500.144 Civil money penalties—payment and collection.

Where the assessment is directed in a final order by the Secretary or in a final judgment issued by a United States District Court, the amount of the penalty is immediately due and payable to the United States Department of Labor. The person assessed such penalty shall remit promptly the amount thereof, as finally determined, to the Secretary by certified check or by money order, made payable to the order of "Wage and Hour Division, Labor." The remittance shall be delivered or mailed either to the Administrator, in Washington, DC, or to the Wage and Hour Division Regional Office for the area in which the violations occurred.

### § 500.145 Registration determinations.

Section 500.51 set forth the standards under which the Secretary may refuse to issue or to renew, or may suspend or revoke, a Certificate of Registration